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Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-459

THE GOODYEAR TIRE & RUBBER COMPANY

Petitioner,

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

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LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA
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PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

Petitioner, The Goodyear Tire & Rubber Company, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on June 25, 1975.

CITATIONS TO OPINIONS BELOW

The decision of Arbitrator Edwin R. Teple, which is unreported, is printed herewith at App. A26. The Opinion of the Court of Common Pleas of Auglaize County is not officially reported, but may be found in 6 F.E.P. Cases 1069 and is printed herewith at App. A20. The Opinion of the Court of Appeals of Ohio, Third Appellate District, is not officially reported, but may be found at 8 F.E.P. Cases 128 and is printed herewith at App. A11. The Opinion of

the Supreme Court of Ohio is reported at 42 Ohio St. 2d 516, and is printed herewith at App. A1.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on June 25, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3) for the reason that the decisions of the Ohio Courts have deprived Petitioner of due process and of the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

QUESTION PRESENTED

Whether Ohio has deprived Petitioner of its property without due process of law and has denied Petitioner equal protection of the laws by delegating to an arbitrator the power to determine Petitioner's legal rights and duties under Title VII of the Civil Rights Act of 1964.

CONSTITUTIONAL PROVISION AND STATUTES AND GUIDELINE INVOLVED

The constitutional provision involved is The Fourteenth Amendment of The United States Constitution, Section 1, as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statutes involved are Sec. 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-2 and Ohio Revised Code Sec. 2711.10(D) as follows:

42 United States Code, §2000e-2:

> Unlawful employment practices-Employer practices.
>
> (a) It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Ohio Revised Code §2711.10 (D):

> In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:
>
> * * * * *
>
> (D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.
>
> If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may direct a rehearing by the arbitrators.

The Guideline involved is Equal Employment Opportunity Commission Guidelines on Discrimination Be-

cause of Sex, 29 C.F.R. Part 1604, Sec. 1604.10(b), as follows:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

STATEMENT OF THE CASE

On February 7, 1973, Arbitrator Edwin R. Teple issued an award sustaining a grievance which protested the refusal of The Goodyear Tire & Rubber Company (hereinafter "Goodyear") to pay accident and sickness benefits to female employees who were on pregnancy leave and who were declared by a doctor to have been disabled for more than six (6) weeks.

In his award, Arbitrator Teple stated:

> There is no question in the Umpire's mind that the terms of the third paragraph in Section C-1(a), Part V, of the Pension, Insurance and Service Award Agreement are in conflict with the EEOC Guidelines as spelled out in Section 1604.10(b) thereof.
>
> * * * * *
>
> The Guidelines have become part of the Code of Federal Regulations, and in the Umpire's judgment the provision in question (1604.10) constitutes a

federal regulation within the meaning of Section C-8, Part V of the Pension, Insurance and Service Award Agreement. This section specifies that the provisions of Section C may be appropriately modified where necessitated by federal regulation.

In this instance, one party to the insurance agreement, the Union, believes that the modification of the provision in the third paragraph in Section C-1(a) is necessitated by the federal regulation in question. The Company, however, disagrees and thus the issue has been presented to the Umpire.

In the Umpire's opinion, under the circumstances shown it is within his power to accomplish the modification which Section C-8 contemplates, since this provision amounts to an express exception to the general prohibition contained in Article V(b) (4) of the Master Agreement.

* * * * *

The Umpire finds that the modification in question is necessitated by federal regulation.

Goodyear instituted an action in the Court of Common Pleas of Auglaize County, seeking a judgment under Ohio Revised Code Sec. 2711.10(D) vacating the arbitration award on the ground that the arbitrator exceeded his powers. On cross motions for summary judgment, Goodyear argued in its brief and orally that the arbitrator exceeded his power by finding the Equal Employment Opportunity Commission Guideline to be a federal regulation which compelled him to modify the parties' Pension, Insurance and Service Award Agreement in order to grant sick and accident benefits to females on pregnancy leave, based upon Part V, Section C-8 thereof, which permitted modification of the Agreement "where necessitated by federal or state statute or regulation".

The Court of Common Pleas entered a judgment on December 11, 1973, denying Goodyear's motion for sum-

mary judgment and granting the Union's motion for summary judgment. The Court of Common Pleas found as a matter of fact that:

> the Umpire interpreted the EEOC guideline as a regulation covered in the language of the agreement pertaining to pregnancy and sex discrimination, and modified the effect of the agreement and awarded the decision to the employee with the grievance . . . .

The Court found as a matter of law that "the EEOC Guidelines are not regulations . . . ."

However, the Court concluded that the arbitrator:

> could determine that the Collective Bargaining Agreement, was in conflict with the federal statute covering sex discrimination, 42 U.S.C.A. Section 2000e2, as evidenced by the March 1972 Guidelines of the Equal Employment Opportunities Commission;
>
> could, by inference, modify the agreement so that it would conform to federal statute, from the language Part V Sec. C8, page 39, Ins. Agreement; ". . . may be appropriately modified where necessitated by federal statute . . . ."

On appeal to the Court of Appeals of Ohio, Third Appellate District, Goodyear argued in its brief and orally that the Arbitrator had exceeded his powers in finding the Guideline to be a federal regulation requiring modification of the parties' Insurance Agreement, and that the Supreme Court decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), limited the scope of an arbitrator's power in deciding legal issues arising under Title VII of the Civil Rights Act of 1964, which was exceeded by the Arbitrator in this case.

On April 17, 1974, the Court of Appeals rendered its opinion which affirmed the decision of the Court of Common Pleas insofar as it refused to set aside the arbitrator's award. The Court of Appeals agreed with the Court of Common Pleas that:

> In arriving at his decision the arbitrator concluded that Section 1604.10(b) of the Guidelines on Discrimination Because of Sex adopted by the Equal Employment Opportunity Commission . . . constituted a federal regulation which conflicted with the specific terms hereinbefore referred to of the agreements between the union and the company, making such specific terms discriminatory, and that the specific terms of the agreement had to yield to the guideline in question.

While the Court of Appeals also agreed that the Guidelines were not federal regulations, it held that the arbitrator did not exceed his authority. However, the Court of Appeals based its approval of the arbitrator's action upon a different theory than that relied upon by the Common Pleas Court. The Court of Appeals reasoned:

> It is basic contract law that valid applicable statutory provisions are parts of every contract as fully as if extended in writing therein. *Bell v. Northern Ohio Tel. Co.*, 149 Ohio St. 157, and *Eastern Machinery Co. v. Peck*, 161 Ohio St. 1. Thus the quoted provisions of the Civil Rights Act of 1964 were equally a part of the insurance contract herein involved as were its provisions dealing with disability benefits. As they were already part of that contract they did not become so by any act of the arbitrator in considering and disposing of the grievance as to pregnancy disabilities. It was then properly up to the arbitrator under his submission to determine whether there was an inconsistency or conflict between the provisions of the contract written into it by the Civil Rights Act and those written into it by the parties and, if such was found, to resolve same.

The *Gardner-Denver* issue was ignored.

Thereafter, the Supreme Court of Ohio took jurisdiction and, on June 25, 1975, affirmed the judgment of the Court of Appeals, with Justice Corrigan dissenting.

Goodyear argued in its brief and orally to the Supreme Court of Ohio that the decisions below were in conflict with the role of an arbitrator in adjudicating Title VII claims, and the scope of his authority in doing so, as stated by the United States Supreme Court in *Alexander v. Gardner-Denver Co., supra.*

The Supreme Court of Ohio found that the arbitrator's language was ambiguous, but affirmed the judgment of the lower court on the ground that an ambiguity which permits the inference that an arbitrator may have exceeded his authority does not warrant vacating the award. However, the Court relegated the due process-equal protection issue presented by the *Gardner-Denver* decision to a footnote, noting merely that it stands for the proposition that a statutory remedy is an alternative, rather than a substitute, for a contractual remedy granted by arbitration. It did not, however, face the critical issue of the right of an arbitrator to determine unsettled federal legal issues under the guise of contract interpretation, in light of the limitations on an arbitrator's role in grievances raising Title VII issues implicit in *Gardner-Denver.*

REASONS FOR GRANTING THE WRIT

I

In a case of first impression, Ohio has, in the case at bar, granted to an arbitrator the right to determine finally whether Title VII of the Civil Rights Act of 1964 requires an employer, Petitioner here, to treat pregnancy-related disabilities as any other temporary disability under a sickness and accident insurance plan provided by the employer for its employees pursuant to a collective bargaining agreement. This delegation of judicial authority by the Ohio courts comes at a time when the state of the law on this question is wholly uncertain, with this precise issue now pending before this Court in *Liberty Mutual Insurance Co. v. Wetzel*, 74-1245, *cert. granted*, 43 L.W. 3625 (May 27, 1975).

Since provisions for final and binding arbitration are currently found almost universally in collective bargaining agreements, as are non-discrimination clauses, should the decision below be permitted to stand, it would mean that almost every organized employer would be subject to having its rights and duties under Title VII determined finally and without right of appeal by an arbitrator who may well not even be a lawyer.[1]

This Court has spoken only indirectly on the role of an arbitrator in the resolution of issues involving the consruction of Title VII. In *Alexander v. Gardner-Denver Co., supra*, where the issue was whether an employee was foreclosed from a trial *de novo* of his Title VII claim in the federal courts by the prior submission of the claim to final and binding arbitration, this Court acknowledged that the courts, rather than an arbitrator, should be responsible for the adjudication of constitutional and statutory issues un-

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[1] *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 at 57, note 18.

der Title VII. This Court described the arbitrator's role in cases involving Title VII issues as follows:

> As the proctor of the bargain, the arbitrator's task is to effectuate the intent of the parties. His source of authority is the collective-bargaining agreement, and he must interpret and apply that agreement in accordance with the "industrial common law of the shop" and the various needs and desires of the parties. The arbitrator, however, has no general authority to invoke public laws that conflict with the bargain between the parties:
>
> * * * * *
>
> If an arbitral decision is based "solely upon the arbitrator's view of the requirements of enacted legislation," rather than on an interpretation of the collective-bargaining agreement, the arbitrator has exceeded the scope of the submission," and the award will not be enforced. *Ibid.* Thus the arbitrator has authority to resolve only questions of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by Title VII.
>
> 415 U.S. at 53-54.

Then, in answer to respondent employer's urging that the Court adopt a rule deferring to arbitral decisions on discrimination claims which met specified conditions, the Court responded, at 415 U.S. 56-57, as follows:

> The purpose and procedures of Title VII indicate that Congress intended federal courts to exercise final responsibility for enforcement of Title VII; deferral to arbitral decisions would be inconsistent with that goal. Furthermore, we have long recognized that "the choice of forums inevitably affects the scope of the substantive right to be vindicated." *U.S. Bulk Carriers v. Arguelles,* 400 U.S. 351, 359-360 (1971) (Harlan, J., concurring). Respondent's deferral rule is necessarily premised on the assumption that arbitral

processes are commensurate with judicial processes and that Congress impliedly intended federal courts to defer to arbitral decisions on Title VII issues. We deem this supposition unlikely.

Arbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII. This conclusion rests first on the special role of the arbitrator, whose task is to effectuate the intent of the parties rather than the requirements of enacted legislation. Where the collective-bargaining agreement conflicts with Title VII, the arbitration must follow the agreement. To be sure, the tension between contractual and statutory objectives may be mitigated where a collective-bargaining agreement contains provisions facially similar to those of Title VII. But other facts may still render arbitral processes comparatively inferior to judicial processes in the protection of Title VII rights. Among these is the fact that the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-583 (1960). Parties usually choose an arbitrator because they trust his knowledge and judgment concerning the demands and norms of industrial relations. On the other hand, the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts. (footnote omitted).

Thus, this Court has acknowledged that, at least in regard to issues concerning constitutional or statutory interpretation of Title VII, decisional responsibility must lie in the courts. Yet, the Ohio courts in this case have mandated that Petitioner is finally bound, without right of ju-

dicial review, by the unguided determination of statutory construction made by an arbitrator in a non-judicial proceeding. By this holding Petitioner has been denied its rights guaranteed by the Fourteenth Amendment.

II

This case also raises broad policy issues even beyond the deprivation of Petitioner's constitutional rights. The clear implication, if this decision should stand, is that any employer's Title VII duties could well be based, not on considered judicial construction of statute, but instead upon the personal views of the particular arbitrator presented with a Title VII grievance. Thus, the certainty and uniformity of application of Title VII duties would be abandoned in favor of a "civil rights law of the shop" created by innumerable arbitrators unfettered by statutory direction or judicial review.

Since the recent past has shown that the flow of discrimination issues to arbitrators, and local, state and federal civil rights agencies and the judicial system has reached flood stage, this Court should act now to prevent the establishment by arbitrators of a multitude of differing psuedo-statutory interpretations which are binding only on specific employers, and establish instead uniform guidelines to be applied by any court[2] faced with the question of the scope of an arbitrator's power to construe and apply Title VII on issues lacking prior judicial interpretation.

Precedent for such action is readily found in the development of labor/employee relations law. In 1947, the *Labor Management Relations Act*, 29 U.S.C. 151 *et seq.*, declared arbitration to be the desirable method for the settlement of grievances in the collective bargaining re-

[2] Although this case arose under Ohio law, the Federal Arbitration Act, 9 U.S.C. Sec. 10(d), contains almost identical language.

lationship (29 U.S.C. Sec. 173(d)) and, in Sec. 301 (29 U.S.C. Sec. 185), established jurisdiction in the federal courts over suits by and against labor organizations for violation of collective bargaining agreements. After considerable litigation resulting in varying constructions by the lower courts, this Court decided a line of cases which established direction and guidance for all courts faced with such issues. Thus, in *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957), this Court decreed that Sec. 301 required the courts to fashion a federal law applicable to cases arising thereunder, including cases arising under agreements to arbitrate grievance disputes, based upon the policy of the national labor laws. Then, in the *Steelworkers Trilogy*[4], this Court set forth the basic substantive law regarding the enforcement of agreements to arbitrate and of arbitration awards. Finally, in *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962), this Court held that Sec. 301 did not divest state courts of jurisdiction over suits for violation of a contract between an employer and a labor organization, and ruled several weeks later that in such a suit, the state court must apply the federal law created by the *Lincoln Mills* decision. *Local 174, Teamsters v. Lucas Flour Co.* 369 U.S. 95 (1962).

Petitioner urges that the time has come for this Court to establish criteria governing the now uncontrolled right of an arbitrator to establish himself as the ultimate determinant of the duties imposed by Title VII on a particular employer.

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[4] *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

OPINION OF THE SUPREME COURT OF OHIO

(Decided June 25, 1975)

No. 74-641

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

THE GOODYEAR TIRE & RUBBER CO.,
Appellant,

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA,
Appellee.

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1. A mere ambiguity in the opinion accompanying an arbitration award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for vacating the award when such award draws its essence from a collective bargaining agreement. (*United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, followed.)

2. R. C. 2711.10 limits judicial review of arbitration to claims of fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his authority.

APPEAL from the Court of Appeals for Auglaize County.

Goodyear Tire and Rubber Co., plaintiff-appellant, (the Company), seeks to vacate an arbitration award granted pursuant to the grievance provision of a collective bargaining agreement with Local Union No. 200, United

Rubber, Cork, Linoleum and Plastic Workers of America, (the Union), defendant-appellee. Both parties filed motions for summary judgment in the Court of Common Pleas, each claiming there was no genuine issue as to any material fact. The court, sustaining the Union's motion for summary judgment, refused to vacate the award, and the Court of Appeals affirmed.[1]

The Company and the Union are parties to two agreements, a collective bargaining agreement (Master Agreement) and a Pension, Insurance, and Service Award Agreement (Pension Agreement), the former, effective July 13, 1970, and the latter, effective June 7, 1970. The Union challenged provisions in both agreements which apply different standards to maternity disability than to other forms of disability caused by illness or injury. The Union primarily relies upon an April 5, 1972, Guideline of the Equal Employment Opportunity Commission, issued pursuant to its authority under Section 713(b), Title VII of the Federal Civil Rights Act of 1964, Section 2000 e-12, Title 42, U. S. Code. The Guideline, Section 1604.10 of Title 29, Chapter XIV of the Code of Federal Regulations, essentially provides that disabilities caused or contributed to by pregnancy be treated in the same manner as other temporary disabilities for purposes of benefits, privileges, and leave. The Master Agreement herein provides for temporary disability leave for the period of any illness, but limits pregnancy leave to four months after the birth of the child, with extension of leave available. The Pension Agreement provides for the payment of disability benefits to the extent of 52 weeks for each period of temporary disability, but limits benefits to six weeks for all disabilities due to any one pregnancy.

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[1] However, because no motion to confirm the award had been made by the Union, the Court of Appeals reversed the confirmation of the award.

The dispute was submitted to arbitration as provided for in the grievance procedures of both agreements, and the arbitrator sustained the grievance with regard to the payment of disability benefits under the Pension Agreement to employees who were on pregnancy leave and who had been declared by their doctors to be disabled beyond a period of six weeks. No case of a denial of the extension of any pregnancy leave under the Master Agreement was presented, and the arbitrator declined to make any award on that aspect of the matter.

The cause is now before this court pursuant to our allowance of a motion to certify the record.

STERN, J. The essential claim made by the Company is that the arbitrator exceeded his powers. Specifically, the Company claims that the arbitrator made a manifest error of law by determining that the EEOC Guideline was a federal regulation, and that this error exceeded his powers.

R. C. 2711.10 provides:

"In any of the following cases, the Court of Common Pleas shall make an order vacating the award upon the application of any party to the arbitration if:

"(A) The award was procured by corruption, fraud, or undue means.

"(B) There was evident partiality or corruption on the part of the arbitrators, or any of them.

"(C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

"(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

"If an award is vacated and the time within which the agreement required the award to be made has not expired,

the court may direct a rehearing by the arbitrators."

The Pension Agreement, Part V, Section F-6, states that "* * * the impartial umpire shall have the authority only to decide the question pursuant to the provisions of this Part V applicable to the question, but he shall have no authority in any way to alter, add to, or subtract from any such provisions. The decision of the umpire shall be binding on the employer, such employee, and all other interested parties. * * *"

The provision of the Pension Agreement subject to dispute was Part V, Section C-1(a), which applied to maternity disabilities. Section C-8 provides that "[t]he provisions of this Section C may be appropriately modified where necessitated by federal or state statute or regulation." The arbitrator held that it was within his power to apply the modification clause in Section C-8, as an express exception to the general prohibition against altering the provisions of the contract.[2]

No claim is raised that the arbitrator's determination that he had jurisdiction to alter the agreement as neces-

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[2] Part V, Section C of the Pension Agreement, provides:

"1. Accident and Sickness Benefits for Employees

"(a) General.

"Benefits will be paid because of a disabling accident or sickness while under the care of a doctor licensed to practice medicine.

"Benefits will be payable from the first day of disability due to accident or occupational illness; the eighth day of disability due to non-occupational sickness, or the first day of hospital confinement if occurring prior to the eighth day. Benefits will be paid for the duration of the disability not to exceed 52 weeks for each period of disability.

"Benefits will be limited to six weeks for all disabilities due to any one pregnancy. Benefits for disability due to pregnancy will be available only if the pregnancy commences after the employee becomes covered under this plan.

"* * *

"8. Modification

"The provisions of this Section C may be appropriately modified where necessitated by federal or state statute or regulation."

sitated by statute or regulation exceeded his authority. An arbitrator's authority is limited to that granted him by the contracting parties, and does not extend to the determination of the wisdom or legality of the bargain. "* * * [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *United Steelworkers of America v. Enterprise Wheel & Car Corp.* (1960), 363 U. S. 593, 597. In the instant case, the Pension Agreement does specifically provide for modification as necessitated by statute or regulation. No abuse of authority appears from the arbitrator's decision that he could consider the modification clause to be subject to his jurisdiction and interpretation.

Arbitration of the modification clause, as of other contract clauses, can be effective only to the extent that the arbitrator's decision is conclusive on the parties, where the arbitration is properly and fairly conducted. Were the arbitrator's decision to be subject to reversal because a reviewing court disagreed with findings of fact or with an interpretation of the contract, arbitration would become only an added proceeding and expense prior to final judicial determination. This would defeat the bargain made by the parties and would defeat as well the strong public policy favoring private settlement of grievance disputes arising from collective bargaining agreements.

Ohio's statutory scheme in R. C. 2711.10 thus limits judicial review of arbitration to claims of fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his authority. Similarly, the United States Supreme Court has stated that:

"The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Steelworkers of America v. Enterprise Corp., supra,* at 596.

The Company argues, however, that the arbitrator made a manifest error of law and thereby exceeded his authority. The arbitrator stated in his decision that:

"The Guidelines have become part of the Code of Federal Regulations, and in the umpire's judgment the provision in question (1604.10) constitutes a federal regulation within the meaning of Section C-8, Part V, of the Pension, Insurance and Service Award Agreement. This section specifies that the provisions of Section C may be appropriately modified where necessitated by federal regulation."

The Company contends, and the Union concedes, that the EEOC Guideline cited is not a federal regulation with the force of law. The Guideline is an administrative determination of the meaning of Title VII, promulgated by the agency charged with the enforcement of Title VII. While not legally binding *per se,* the United States Supreme Court has stated that EEOC Guidelines are "entitled to great deference." *Griggs v. Duke Power Co.* (1971), 401 U. S. 424, 434. The guideline in question has also been applied by the EEOC, in *Andreev v. National Broadcasting Co.* (1973), CCH, EEOC Decisions, Paragraph 6380, and upheld by the federal courts, *Wetzel v. Liberty Mutual Insurance Co.* (C. A. 3, 1975), 511 F. 2d 190 (cert. allowed, May 27, 1975); *Hutchison v. Lake Oswego School District* (D. Ore. 1974), 374 F. Supp. 1056; Cf. *Communications Workers of America v. A.T.&T. Co.* (C.A. 2, 1975), F.2d . It has been held that this Guideline "is in accord with the will of Congress as expressed in the Act and its

legislative history." *Gilbert v. General Electric Company* (E.D. Va. 1974), 375 F. Supp. 367, 381.

The arbitrator's decision belies the argument that the arbitrator mistakenly believed the Guideline to be binding. The decision does not state that the Guideline is, as a matter of law, a federal regulation. It states rather that the Guideline is "a federal regulation within the meaning of [the Pension Agreement]." This language is ambiguous. It could mean either that the arbitrator believed the Guideline to be binding, or that he interpreted the term "regulation," as used in the contract, to include an administrative Guideline such as this one, which was published in the Code of Federal Regulations and was an administrative interpretation of a federal statute. Later in his decision, the arbitrator states that the Guideline "* * * is an interpretation of Title VII of the Civil Rights Act, and may properly be presumed to be valid until declared otherwise by the federal courts. A conflict with the provisions of the [Master] Agreement might be found by the EEOC pursuant to a complaint filed with that agency. It also might be found by an umpire, if circumstances were clear enough in a particular case before him." This language strongly suggests that the arbitrator in fact did not mistake the Guideline for a regulation with the force of law. Although the arbitrator's decision may not be wholly free of ambiguity, " * * * [a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award." *United Steelworkers of America v. Enterprise Corp.* (1960), *supra*, at 598[3].

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[3] An arbitrator's decision rejecting a Title VII claim has been held not to foreclose an employee's raising the same claim in a *de novo* hearing in federal court. *Alexander v. Gardner-Denver*

(Footnote continued on following page)

At common law, the courts have almost uniformly refused to vacate an arbitrator's award because of an error of law or fact. It has been held that the arbitrator is the final judge of both law and facts, and that an award will not be set aside except upon a clear showing of fraud, misconduct or some other irregularity rendering the award unjust, inequitable, or unconscionable. *(Allstate Ins. Co. v. Fioravanti* [1973], 451 Pa. 108, 299 A. 2d 585), and that even a grossly erroneous decision is binding in the absence of fraud. *Trustees of Boston & Maine Corp. v. Massachusetts Bay Transportation Authority* (Mass. 1973), 294 N.E.2d 340. See, also, *Grudem Brothers Co. v. Great Western Piping Corp.* (1973), 297 Minn. 313, 213 N.W. 2d 920; *Associated Teachers of Huntington v. Board of Education* (1973), 33 N. Y. 2d 229, 306 N.E. 2d 791; *Bell Aerospace Co. v. Local 516 Inter. Union, UAW* (W. D. N. Y. 1973), 356 F. Supp. 354.

In other cases, courts have vacated an arbitrator's decision, where the central fact underlying an arbitrator's decision is concededly erroneous *(Electronics Corporation of America v. I. U. E., Local 272* [C. A. 1, 1974], 492 F. 2d 1255), or suggested that " * * * if the reasoning [of an arbitrator] is so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling, then the court can strike down the award * * *." *Safeway Stores v. American Bakery & Confectionary Workers, Lo-*

(Continued from previous page)

(1974), 415 U.S. 36. In that decision, the court cited the ways in which arbitration was "a comparatively inappropriate forum for the final resolution of rights created by Title VII." *Supra*, at 56. It is clear, however, that the court intended to permit the courts to grant a statutory remedy as an alternative, not a substitute, to any contractual remedy granted by arbitration. The court stated that "* * * the arbitrator has authority to resolve only questions of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by Title VIII [*sic*]." *Supra*, at 53-54.

cal 111 (C.A. 5, 1968), 390 F.2d 79, 82. In the instant case, we need not consider whether such gross errors might be said to exceed the arbitrator's powers, within the meaning of R. C. 2711.10. It is far from clear in the instant case that the arbitrator made any error at all, or that his decision would have in any way differed absent the claimed error.

The parties to the Pension Agreement specifically agreed that it could be modified as necessitated by statute or regulation. The arbitrator's decision shows that this is what he did. How this or another court might have decided the issue presented to the arbitrator is irrelevant; that decision, by voluntary contract, was left to arbitration and no abuse of authority appears which would justify the courts in reversing that decision. "The arbiter was chosen to be the Judge. That Judge has spoken. There it ends." *Safeway Stores v. American Bakery & Confectionary Workers, supra*, at 84.

Judgment affirmed.

O'NEILL, C. J., HERBERT, CELEBREZZE, W. BROWN and P. BROWN, JJ., concur.

CORRIGAN, J., dissents.

JUDGMENT ENTRY OF THE SUPREME COURT OF OHIO

(Dated June 25, 1975)

No. 74-641

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

GOODYEAR TIRE & RUBBER CO.,
Appellant,

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA,
Appellee.

APPEAL FROM THE COURT OF APPEALS
FOR AUGLAIZE COUNTY

This cause, here on appeal from the Court of Appeals for Auglaize County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed; for the reasons set forth in the opinion rendered herein, and it appearing that there were reasonable grounds for this appeal it, is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; and that a mandate be sent to the Common Pleas Court to carry this judgment into execution.

OPINION OF THE COURT OF APPEALS

(April 17, 1974)

No. 2-74-1

IN THE COURT OF APPEALS

THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

THE GOODYEAR TIRE & RUBBER COMPANY,

Plaintiff-Appellant.

VS.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA,

Defendant-Appellee.

GUERNSEY, *P.J.* Prior to November 1, 1972, Local No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America, hereinafter referred to as the union, and The Goodyear Tire & Rubber Company, hereinafter referred to as the company, submitted to arbitration a grievance of the union as to whether pregnant employees of the company employed in the company plant at St. Marys, Ohio, were entitled to the same leave of absence and disability insurance benefits by reason of the disability of their pregnancy as nonpregnant employees, the union claiming that the specific contract provisions dealing with such benefits in the contracts between the union and the company and providing lesser benefits for pregnancy disability than nonpregnancy disability were discriminatory by reason of sex. On February 7, 1973, the arbitrator (umpire) to whom the dispute had been submitted rendered his decision and award reading, in conclusion, as follows:

> "For the reasons given, the grievance in this case is sustained to the extent that it protests the refusal

of management to pay sick benefits to female employees on pregnancy leave and declared by their doctors to be disabled beyond a period of six weeks. Since there is no indication that an extension of any pregnancy leave, as provided in Title X, Section 1(b), has been improperly denied, an award on this aspect of the matter would not be appropriate."

In arriving at his decision the arbitrator concluded that Section 1604.10(b) of the Guidelines on Discrimination Because of Sex adopted by the Equal Employment Opportunity Commission by virtue of authority contained in section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, constituted a federal regulation which conflicted with the specific terms hereinbefore referred to of the agreements between the union and the company, making such specific terms discriminatory, and that the specific terms of the agreement had to yield to the guideline in question.

On March 16, 1973, the company filed a complaint in the Common Pleas Court of Auglaize County seeking to vacate "the decision and award" of the arbitrator pursuant to R.C. 2711.10(D), providing for the vacation "of the award upon the application of any party to the arbitration if: (D) The arbitrators exceeded their powers, * * *." The union filed answer to the complaint essentially admitting the submission to arbitration but generally denying that the arbitrator had exceeded his powers in making his award. The company, and then the union, each filed motions for summary judgment and briefs in support thereof.

On December 11, 1973, following hearing, the common pleas court filed its journal entry rendering judgment for the defendant "in accordance with its decision and findings hereinbefore set forth in the record of the case, a true copy of which is attached hereto." In the document thus

attached the court found, among other things, that "the EEOC Guidelines are not regulations having the force or effect of law but they are evidence of the Commission's interpretation of the Civil Rights Act," and concluded, among other things, that the arbitrator "has not exceeded his authority and the award of the Umpire [arbitrator] is confirmed," that "the motion of plaintiff for summary judgment is denied," and that "the motion of defendant for summary judgment is sustained, in that the finding of the award of the Umpire is confirmed." It is from the trial court's judgment, so rendered, that this appeal has been taken by the company.

The company's single assignment of error is that "The Common Pleas Court should have granted the motion of Plaintiff-Appellant for summary judgment and an order vacating an arbitration award on the grounds that this arbitrator exceeded his authority by finding that a guideline of the Equal Employment Opportunity Commission was a regulation having the force and effect of law, and, as such, was in conflict with a provision of the collective bargaining agreement."

As the arbitrator made no award as to the issue of discrimination as to leaves of absence and as his award was confined to the issue of discrimination as to insurance benefits for disabilities of pregnancy the trial court's judgment must be interpreted as being confined to, and this appeal must be confined to, the issue on which the award was made. To resolve procedural problems, none of which were raised by the parties, we shall consider the complaint filed in the trial court as a motion (R.C. 2711.05), that a motion constituting an application by the company to vacate an award in favor of employees represented by the union by virtue of a collective bargaining agreement is equivalent to the company seeking to recover on a claim of the invalidity of the award for the purposes of

summary judgment (Civil Rule 56), and that since the trial court's judgment purports to be an order confirming the arbitrator's award appellate jurisdiction in this court exists (R.C. 2711.15).

Although there are certain interrelationships between the Pension, Insurance, and Service Award Agreement (hereinafter called the insurance contract) entered into by and between the union and company on June 7, 1970, which provides for the applicable insurance benefits, and the basic agreement, also executed by and between the union and the company on June 7, 1970, and dealing with general employment provisions, the former agreement is separate from the latter and the terms of the latter apply to the former only when made applicable by express provision or by necessary implication. In this respect we note that we do not find in the insurance agreement any express non-discrimination clause whereas the non-discrimination clause appearing in the basic agreement (Article VIII, Section 13) merely prescribes:

> "The parties agree to the principle that there will be no discrimination in wage rates or other conditions of employment by reason of religion, sex, color, or nationality."

In the view we hereinafter set forth it is not necessary, however, for us to determine whether this contract provision of the basic contract applies also to the insurance contract or whether insurance benefits for pregnancy disability would constitute "conditions of employment."

Similarly, Article II, (b), of the basic contract relating to conflicts of contract provisions with federal or state law purports to apply only to that contract and similarly, for reasons hereinafter set forth, we do not need to determine whether its operation may be extended by implication to the insurance contract.

Coming then to the crux of the matter. Part V, Section C.1(a) of the insurance contract provides for accident or sickness disability benefits for the duration of the disability but "not to exceed 52 weeks for each period of disability", and further limits benefits "to six weeks for all disabilities due to any one pregnancy." Part V, Section C,8 of the insurance contract provides that "the provisions of this section C may be appropriately modified where necessitated by federal or state statute or regulation." Part V, Section F,6 of the insurance contract prescribes as follows:

> "*Grievance Procedure* If any difference shall arise between the Employer and any Employee with respect to whether or not the Employer has provided the benefits under this Part V, and if agreement cannot be reached between the Employer and such Employee, such difference may be taken up as a grievance under the grievance procedure provided for under the Basic Agreement at the Manager of the Labor Department level. If any such grievance shall be taken before the impartial umpire in accordance with such procedure, then the impartial umpire *shall have the authority only to decide the question pursuant to the provisions of this Part V applicable to the question, but he shall have no authority in any way to alter, add to, or subtract from any such provisions. The decision of the impartial umpire shall be binding on the Employer, such Employee, and all other interested parties.* Termination of the Basic Agreement shall not invalidate the use of its grievance procedure for the purposes of this Part V." (Emphasis added.)

Article V(b)(4) of the basic contract provides:

> "(4) The Impartial Umpire shall not have the power to make any award changing, amending, or adding to the provisions of this agreement or to the provisions of any local supplementary agreements. * * *."

The company's basic claim is that the arbitrator exceeded his authority by determining that the Equal Employment Opportunity Commission guideline (Section 1604.10(b)), prescribing that "disabilities caused or contributed to by pregnancy * * * are * * * temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment" and that "written and unwritten employment policies and practices involving matters such as * * * the accrual of * * * benefits and privileges * * * under any health or temporary disability insurance * * * plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities", constituted a federal regulation applicable to the insurance contract between the company and the union and that in so applying it he altered and added to the provisions of Part V of the contract dealing with benefits for disability arising from pregnancy.

Section 703(a)(1) and 703(a)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-2(a)(1),-(a)(2), was in effect on June 7, 1970, when the insurance contract in question was executed by and between the union and the company. These subdivisions of this section prescribe:

> "(a) It shall be an unlawful employment practice for an employer—
>
> (1) * * * to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * sex, * * *; or
>
> (2) to limit, segregate, or classify his employees * * * in any way which would * * * adversely affect his status as an employee, because of such individual's * * * sex * * *."

It is basic contract law that valid applicable statutory provisions are parts of every contract as fully as if extended in writing therein. *Bell v. Northern Ohio Tel. Co.*, 149 Ohio St. 157, and *Eastern Machinery Co. v. Peck*, 161 Ohio St. 1. Thus the quoted provisions of the Civil Rights Act of 1964 were equally a part of the insurance contract herein involved as were its provisions dealing with disability benefits. As they were already part of that contract they did not become so by any act of the arbitrator in considering and disposing of the grievance as to pregnancy disabilities. It was then properly up to the arbitrator under his submission to determine whether there was any inconsistency or conflict between the provisions of the contract written into it by the Civil Rights Act and those written into it by the parties and, if such was found, to resolve same. Although, in view of the enabling statute (Section 713(b), 78 Stat. 265, 42 U.S.C., Sec. 2000e-12) and in view of current court decisions the guideline which he found to be a regulation could not have been one reference to the third paragraph from the end of his decision discloses that he properly applied it as merely an interpretation of the quoted provisions of the Civil Rights Act, even though a most compelling interpretation by reason of having been adopted by the federal body clothed with the enforcement of the act. *Griggs v. Duke Power Company*, 91 S.Ct. 849, 854, 401 U.S. 431, 433. The law which was applied was not the guideline but the quoted provisions of the Civil Rights Act and it was applied not to change or alter the contract or as a public law in conflict with the bargain between the parties but was applied and considered as being a material provision written into the contract. The arbitrator's procedure in this respect was not only contemplated by the contract but did not exceed his authority thereunder as further derived from the issue submitted.

In so saying we do not thereby determine that his conclusion on the issue was proper for the only issue before the common pleas court and thereby before this court was whether he exceeded his authority and not whether he arrived at an erroneous interpretation of the law. Where, as here, the parties have agreed "that the decision of the impartial umpire shall be binding on the Employer, such Employee, and all other interested parties" the arbitrator has jurisdiction of the law and of the facts and his decision cannot be impeached for error. *Corrigan v. Rockefeller*, 67 Ohio St. 354, 367. See also, *Campbell v. Automatic Die & Products Co.*, 162 Ohio St. 321, 329, *Brennan v. Brennan*, 164 Ohio St. 29, and *State, ex rel. Adams v. Gusweiler*, 30 Ohio St. 2d 326.

Finding that the arbitrator did not exceed his authority we conclude that the judgment of the common pleas court, insofar as it refused to set aside his award, was proper and should be affirmed. However, the record does not show that the union ever applied to that court in any manner for a confirmation of the award. It filed no motion for confirmation and its answer and its motion for summary judgment merely countered the company's claim that the award should be vacated. Chapter 2711, Ohio Revised Code, provides only one method of confirming an award and that is upon timely application made to the court of common pleas. So much of the judgment of the common pleas court as purports to confirm the award is reversed and vacated.

Judgment accordingly.

COLE and MILLER, JJ., concur.

JUDGMENT ENTRY OF THE COURT OF APPEALS

No. 2-74-1

IN THE COURT OF APPEALS
Third Appellate Judicial District of Ohio

THE GOODYEAR TIRE & RUBBER COMPANY,
Plaintiff-Appellant.

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA,
Defendant-Appellee.

This case came on to be heard on the 2nd day of April 1974 before the Honorable J. Thomas Guernsey, the Honorable Ralph D. Cole, Jr. and the Honorable Edgar L. Miller, Judges for the Court of Appeals of the Third Appellate Judicial District of Ohio sitting en banc. Both parties were represented by counsel who presented oral arguments to the Court. The Court, being fully advised in the premises finds no error of the common pleas court prejudicial to the appellant in any of the particulars assigned and argued. The Court however finds, sua sponte that the common pleas court exceeded its authority in so much of its judgment purporting to confirm the award of the arbitrator in that no application for such confirmation was ever filed in the common pleas court.

It is thereby ordered, adjudged and decreed that all that part of the judgment of the common pleas court as operates to deny the motion of the Appellant Company to vacate the award of the arbitrator is affirmed. That all that part of the judgment of the common pleas court as purports to confirm the award of the arbitrator is reversed and vacated.

Costs are assessed to the Appellant and the cause is remanded to the common pleas court for execution.

Exceptions saved.

/s/ J. THOMAS GUERNSEY
/s/ RALPH D. COLE, JR.
/s/ EDGAR L. MILLER
Judges

DECISION OF COURT OF COMMON PLEAS ON MOTIONS FOR SUMMARY JUDGMENT

No. 73-74

IN THE COURT OF COMMON PLEAS
Auglaize County, Ohio

THE GOODYEAR TIRE & RUBBER COMPANY,
Plaintiff,

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, *et al.*,
Defendants.

The court finds as matters of fact:

1. plaintiff and defendant had a Collective Bargaining Agreement, the parts of which included a pension and insurance program; effective in 1970;

2. benefits provided under the Pension, Insurance and Service Agreement part were to be paid, for the duration of the disability but not longer than 52 weeks. Except,:

> "Benefits will be limited to six weeks for all disabilities due to any one pregnancy." Part V, C 1 (a)

3. in March 1972, the Equal Employment Opportunities Commission amended its guidelines on sex discrimination, quoted in pertinent part:

> Section 1604.9 Fringe Benefits.
>
> (d) It shall be an unlawful employment practice for an employer to make available for the wives of male employees (benefits) which are not made available for female employees - - -",

and,

> Section 1604.10 Employment Policies Relating to Pregnancy and Childbirth.
>
> (b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance - - - "
>
> Title 29, Labor Chapter XIV Part 1604

4. defendant opened negotiations under the terms of the Collective Bargaining Agreement on the issue of pregnancy benefits and the Agreement's disparity with the EEOC Guideline on sex discrimination. No agreement could be reached. A grievance was then filed by a member of the defendant, and this procedure exhausted, and an Impartial Umpire E. R. Teple was given the dispute under the binding arbitration clauses, Article V (b) (3) page 24, Agreement (Exhibit A).

5. the Collective Bargaining Agreement, Part V, Section C 8, page 39, Insurance Agreement, provides:

> "8. Modification.
>
> "The provisions of this Section C may be appropriately modified where necessitated by federal or state statute or regulation."

also, the Master Agreement Article XIII, Section 13 provides:

"Section 13—Non-Discrimination

"The parties agree to the principle that there will be no discrimination in wage rates or other conditions of employment by reason of religion, sex, color or nationality."

6. the Umpire interpreted the EEOC guideline as a regulation covered in the language of the agreement pertaining to pregnancy and sex discrimination, and modified the effect of the agreement and awarded the decision to the employee with the grievance, that she was entitled to benefits beyond the six weeks period; and,

7. plaintiff and defendant agree on the facts and have agreed that the common pleas court has jurisdiction to hear the case on the issue, did the Impartial Umpire exceed his authority in arbitrating the grievance and in making an award to the employee.

The court finds as matters of law:

1. Ohio Revised Code, Sections 2711.01-.16 gives jurisdiction over the decisions of arbitration procedures in labor disputes, if it can be shown there are grounds as defined in Section 2711.10:

"In any of the following cases the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

(D) The arbitrators exceeded their powers - - -".

2. an employer, where there is a no strike clause, a grievance procedure and binding arbitration is bound by the decision of the arbitrator, on matters dealing with:

a. the merits;

United Steel Workers v. American, 363 U.S. 564

b. arbitrability of subjects;

United Steel Workers v. Warrior, 363 U.S. 574

c. contract interpretations;

United Steel Workers v. Enterprise, 363 U.S. 593

3. an employee is bound by the decision of the arbitrator in matters pertaining to civil rights where the arbitrator must, interpret the law and facts necessary to the decision.

Dewey v. Reynolds, 429 F.2d 324

4. the purpose of the arbitration clauses in the Collective Bargaining Agreement (1) and of the Guidelines of the Equal Employment Opportunities Commission (2) is to arbitrate and conciliate differences and thus avoid litigation, with its pitfalls of delay from legal ploy and court congestion;

(1) *United Steelworkers v. Warrior*, 363 U.S. 574

(2) *Edwards v. North American*, 291 F. Supp. 199

5. 42 U.S.C.A. Section 2000e-2 (a) provides:

"(a) It shall be an unlawful employment practice for an employer—

(1) to - - - discriminate against any individual with respect to his - - - conditions, or privileges of employment, because of such individual's - - - sex

6. the EEOC Guidelines are not regulations having the force or effect of law but they are evidence of the Commission's interpretation of the Civil Rights Act, *American Newspaper v. Alexander*, 294 F. Supp. 1100.

The court concludes from its findings of fact and conclusions of law that the Umpire:

1. had the authority to determine what could be arbitrated within the terms of the Collective Bargaining Agreemen, including matters of civil rights;

2. could decide all matters of law and fact pertinent to the grievance issue;

3. could determine that the Collective Bargaining Agreement, was in conflict with the federal statute covering sex discrimination, 42 U.S.C.A. Section 2000e 2, as evidenced by the March 1972 Guidelines of the Equal Employment Opportunities Commission;

4. could, by inference, modify the agreement so that it would conform to federal statute, from the language Part V Sec. C 8, page 39, Ins. Agreement;

> "- - - may be appropriately modified where necessitated by federal statute- - -"

5. the common pleas court should not decide the question of authority since the Umpire under an arbitration clause has exercised his authority in accordance with the Collective Bargaining Agreement. Arbitration, should be final.

The court finds that the Umpire has not exceeded his authority and the award of the Umpire is confirmed.

The motion of plaintiff for summary judgment is denied.

The motion of defendant for summary judgment is sustained, in that the finding of the award of the Umpire is confirmed.

The defendant shall prepare the judgment entry in accordance to Section 2711.12 Ohio Revised Code and the plaintiff shall pay all of the costs.

/s/ GERALD RONE
Judge

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS

No. 73-74

IN THE COURT OF COMMON PLEAS
Auglaize County, Ohio

THE GOODYEAR TIRE & RUBBER COMPANY,
Plaintiff,

vs.

LOCAL UNION NO. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, *et al.*,
Defendants.

This case came on to be heard on the 12th day of October, 1973 before the Honorable Gerald Rone. Both parties were represented by counsel who presented oral arguments to the Court. The Court, being fully advised in the premises enters judgment for Defendant, in accordance with its Decision and Findings hereinbefore set forth in the record of the case, a true copy of which is attached hereto.

/s/ Gerald Rone
Judge

A26

DECISION OF UMPIRE

VOLUNTARY LABOR ARBITRATION

DECISION NO. ERT-36

GRIEVANCE NO. 23-72

Issued: February 7, 1973

GOODYEAR TIRE & RUBBER COMPANY,
ST. MARYS PLANT

and

UNITED RUBBER, CORK, LINOLEUM AND
PLASTIC WORKERS OF AMERICA
LOCAL 200

Umpire: Edwin R. Teple

Date of Hearing: November 1, 1972

Place of Hearing: St. Marys, Ohio

STATEMENT OF COMPLAINT (August 1, 1972):

Violation of Part V, Section (C)-(1)-(A), third paragraph of the Insurance Agreement as has been interpreted by Part 1604.10B of Title 29, Chapter 14 as amended as of April 5, 1972 of the Title VII, 1964 Federal Law on non-discrimination.

Local 200 protests the refusal of management to pay sick and accident weekly benefits to female employees who are on a pregnancy leave and who have submitted Sick and Accident forms showing they are still under a doctor's care.

Part V, Section (C)-(1)-(A), third paragraph of the Insurance Agreement has been shown to be in violation of Title VII.

The Union therefore requests that management pay weekly benefits to female employees for the period of time they are off work and under a doctor's care as is required by Part V, Section (C)-(1)-(A), second paragraph, and that all benefits concerning seniority, Holidays, Vacations and leave of absence clauses in our contracts be given to these employees.

COMPANY ANSWER (August 17, 1972):

It is the interpretation of the Goodyear Legal Department that there is no violation of Title VII as amended on April 5, 1972.

It is also the interpretation of the Company that Part V, Section (C)-(1)-(A), third paragraph of the Insurance Agreement negotiated by the URWA and The Goodyear Tire and Rubber Company has been followed.

In view of the above facts, this complaint must be denied.

CONTRACT PROVISION: Part V of Pension, Insurance, and Service Award Agreement, Section C-1 (a) and 8; Article II(b), and Article X of the Basic Agreement, Section 1(b) 3 and 4; Article V(b)(4).

BACKGROUND

Part V of the Pension, Insurance and Service Award Agreement, effective June 7, 1970, provides insurance benefits as outlined therein. Section C-1 (a) thereof, relating to accident and sickness benefits for employees, provides in part as follows:

> Benefits will be paid because of a disabling accident or sickness while under the care of a doctor licensed to practice medicine.
>
> Benefits will be payable from the first day of disability due to accident or occupational illness; the eighth day of disability due to non-occupational sickness, or the first day of hospital confinement if occurring prior to the eighth day. Benefits will be paid for the duration of the disability not to exceed 52 weeks for each period of disability.
>
> Benefits will be limited to six weeks for all disabilities due to any one pregnancy. Benefits for disability due to pregnancy will be available only if the pregnancy commences after the Employee becomes covered under this Plan.

As a result of the limitation in the third paragraph, above, the Company has paid accident and sickness benefits to female employees absent from work due to pregnancy, only for a period of six weeks.

As of April 5, 1972 the Equal Employment Opportunity Commission issued amended Guidelines on Discrimination Because of Sex, pursuant to its authority under Section 713 (b), Title VII, of the Federal Civil Rights Act of 1964, 78 Stat. 265, 42 U.S.C., Sec. 2000 e-12. The revised Guidelines became part of Title 29, Chapter XIV, Part 1604 of the Code of Federal Regulations. Section 1604.10 thereof (Employment Policies Relating to Pregnancy and Childbirth) provides as follows:

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in *prima facie* violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

According to the Union, negotiations between the parties on this subject began in Akron immediately after the publication of the revised Guidelines. The negotiations, it is said, failed to resolve the Company-wide problem, and thereafter several claims were presented for extended accident and sickness benefits to female employees at the St. Marys plant. When these claims were denied, the grievance involved in this case was filed and appealed to arbitration.

The Union contends that the intent of Section 1604.10 (b) of the revised Guidelines is clear and should be accepted as a modification of the third paragraph in Section

C-1 (a) of the insurance agreement contained in Part V. The provision in the Federal regulation, it is argued, became mandatory on April 5, 1972. Section C-8 of the insurance agreement, it is pointed out, specifically provides that "the provisions of this Section C may be appropriately modified where necessitated by federal or state statute or regulation." As a result, the Union claims, the Company is obligated to provide additional sickness benefits to its female employees on pregnancy leave.

In addition, and for the same reason, the Union contends that when female employees are absent due to pregnancy, the Company is obligated to apply the leave of absence rule in paragraph 3 of Section 1 (b), Article X, of the Master Agreement, providing as follows:

> 3. An employee who becomes ill or is injured and whose claim of illness or injury is supported by satisfactory evidence shall be granted a leave of absence to cover the period of such illness. Seniority will accumulate for the first two (2) years of such leave.
>
> In the event there is a disagreement between the Employer's physician and the employee's physician regarding the medical evidence presented at the time of return from injury or illness, the question shall be submitted to a third physician selected by such two physicians. The medical opinion of the third physician after examination of the employee and consultation with the other two physicians shall decide such question. The expenses of the third physician shall be borne jointly by the Employer and the employee.

Instead of using these terms, the Union asserts, the Company has applied paragraph 4 of the same section, providing:

> 4. An employee who becomes pregnant will be given a leave of absence extending for four (4) months after the birth of the child upon presentation

of a doctor's release. Extension of the leave shall be made in cases where the employee's physical condition does not permit return to work, providing the claim is supported by satisfactory evidence. Seniority shall accumulate during this period but for no longer than two (2) years.

In this connection, the Union points out that Article II (b) of the Master Agreement provides:

> In the event that any of the provisions of this contract are found to be in conflict with any valid Federal or State Law now existing or hereinafter enacted, it is agreed that such law shall supersede the conflicting provisions without any way affecting the remainder of these provisions.

Also, Section 13 of Article XIII provides:

> Section 13 - Non-Discrimination
>
> The parties agree to the principle that there will be no discrimination in wage rates or other conditions of employment by reason of religion, sex, color, or nationality.

The Company takes the position that under the terms of the third paragraph of Section C-1(a), accident and sickness benefits are limited to six weeks for all disabilities due to any one qualifying pregnancy.

In this connection, it is pointed out that paragraph (4) of Section (b), Article V, provides:

> The Impartial Umpire shall not have the power to make any award changing, amending, or adding to the provisions of this agreement, or to the provisions of any local supplementary agreements. Specifically the Umpire shall not have the power to arbitrate general wage levels.

While acknowledging that Article II (b) refers to provisions of the contract found to be in conflict with any valid Federal Law, the Company contends that the jurisdiction of the Umpire does not extend to the interpreta-

ion of Federal or State Law. The Union, it is claimed, is asking the Umpire to interpret the law without any determination by a court. The EEOC Sex Guidelines, it is said, are being challenged in the courts and the Supreme Court has not yet addressed itself to this question.

In the absence of a court ruling that the provision in the Pension, Insurance and Service Award Agreement is in conflict with a valid Federal Law, the Company contends, the Umpire is obligated to follow the terms of the collective bargaining agreements negotiated by the parties.

DECISION

There is no question in the Umpire's mind that the terms of the third paragraph in Section C-1(a), Part V, of the Pension, Insurance and Service Award Agreement are in conflict with the EEOC Guidelines as spelled out in Section 1604.10(b) thereof. Temporary disabilities caused by a pregnancy, miscarriage, abortion, childbirth, and recovery therefrom, it is provided, should be treated the same as any other temporary disability under any health or disability insurance or sick leave plan available in connection with employment. Payment under any such plan, it is specified, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities. A six-week limitation on benefits for all disabilities due to any one pregnancy is clearly in conflict with these terms.

The Guidelines have become part of the Code of Federal Regulations, and in the Umpire's judgment the provision in question (1604.10) constitutes a federal regulation within the meaning of Section C-8, Part V, of the Pen-

sion, Insurance and Service Award Agreement. This section specifies that the provisions of Section C may be appropriately modified where necessitated by federal regulation.

In this instance, one party to the insurance agreement, the Union, believes that the modification of the provision in the third paragraph in Section C-1(a) is necessitated by the federal regulation in question. The Company, however, disagrees and thus the issue has been presented to the Umpire.

In the Umpire's opinion, under the circumstances shown it is within his power and jurisdiction to accomplish the modification which Section C-8 contemplates, since this provision amounts to an express exception to the general prohibition contained in the Article V(b)(4) of the Master Agreement.

This conclusion is in accordance with the rather widely accepted view that when faced with ambiguous contract language, an arbitrator should adopt the interpretation which will harmonize the contract with the law, since the parties presumably intend a valid contract. See, Mittenthal, The Role of Law in Arbitration, Proceedings of the 21st Annual Meeting, National Academy of Arbitrators, p. 43. In the situation at hand, the contract language indicates that Section C "may be appropriately modified," but it does not indicate by whom. There is no specification that mutual agreement is required for this purpose. Where one party insists that modification should be made but the other declines, it seems appropriate that the modification should be accomplished by the Umpire when the issue has been properly presented to him and the only condition has clearly been met. The Umpire finds that the modification in question is necessitated by federal regulation.

A court decision is not a prerequisite to a determination that a governmental regulation is applicable in a particular situation. All of us follow the regulations of Internal Revenue, and many others, without a court order directing us to do so.

With reference to leaves of absence under Section 1(b), Article X, of the Master Agreement, the differences are not as clear. Paragraph 4 provides that a pregnancy leave shall be extended in cases where the female employee's physical condition does not permit her return to work within four months. No case has been presented to indicate that such an extension, if supported by satisfactory evidence as required in both paragraphs, has been denied.

Nevertheless, to the extent that there may be some distinct and important difference in the administration of paragraphs 3 and 4 of the leave section, the Federal regulation embodied in Section 1604.10(b) of the EEOC Guidelines is clearly applicable. The Guideline requires that policies and practices involving the commencement and duration of leave, the availability of extensions, and the accrual of seniority and other benefits and privileges, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities. Moreover, administrative determinations which may create or overemphasize presumed differences between temporary disabilities due to pregnancy and those from other causes, would be in conflict with Section 13 of Article VIII.

Article II(b) clearly provides that where a conflict is found, any valid Federal Law shall supersede the conflicting provisions of the Basic Agreement. In the Umpire's opinion, it is not necessary to take the matter to court, or to wait until the United States Supreme Court determines the issue, in order to activate this provision.

The Guideline in question is an interpretation of Title VII of the Civil Rights Act, and may properly be presumed to be valid until declared otherwise by the Federal Courts. A conflict with the provisions of the Agreement might be found by the EEOC pursuant to a complaint filed with that Agency. It also might be found by an Umpire, if the circumstances were clear enough in a particular case before him.

With reference to the competence of arbitrators to determine an issue involving a possible conflict between contract provisions and clearly applicable State or Federal law, the Umpire agrees with Mittenthal's view as expressed in The Role of Law in Arbitration, Proceedings of the 21st Annual Meeting, National Academy of Arbitrators, p. 48. In the Umpire's opinion, which happens to have a rather substantial foundation on this particular point, there are a number of arbitrators who would be just as competent for this purpose as any judge. He is equally certain that any of the Umpires available to these parties would not hesitate to let the parties know if the issue in a particular situation were beyond either his competence or his jurisdiction as delineated in the Agreement.

For the reasons given, the grievance in this case is sustained to the extent that it protests the refusal of management to pay sick benefits to female employees on pregnancy leave and declared by their doctors to be disabled beyond a period of six weeks. Since there is no indication that an extension of any pregnancy leave, as provided in Title X, Section 1(b), has been improperly denied, an award on this aspect of the matter would not be appropriate.

/s/ Edwin R. Teple
Umpire

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Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-459

THE GOODYEAR TIRE & RUBBER COMPANY
Petitioner,

vs.

LOCAL UNION No. 200, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Respondent, Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America, prays that a Writ of Certiorari not issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on June 25, 1975.

QUESTION PRESENTED

Whether Ohio has deprived Petitioner of its property without due process of law and has denied Petitioner equal protection of the laws by upholding an arbitrator's decision to modify the terms of a collective bargaining agreement as necessitated by statute or regulation where the parties to the agreement voluntarily delegated such specific authority to the arbitrator.

STATEMENT OF THE CASE

Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America (hereinafter "Union") filed a grievance pursuant to its collective bargaining agreements with Goodyear Tire and Rubber Company (hereinafter "Company") protesting the Company's refusal to pay accident and sickness benefits to female employees who were on pregnancy leave and were declared by a doctor to have been disabled for more than six (6) weeks. On February 7, 1973, Arbitrator Edwin R. Teple sustained the Union's grievance.

In rendering his award in favor of the Union, the arbitrator found that he could not sustain the continued effectuation of the pregnancy disability payments without obfuscating the clear meaning of Guideline 1604.10(b) promulgated by the Equal Employment Opportunity Commission. The arbitrator supported his determination with the following language:

> "Article II(b) (of the collective bargaining agreement) clearly provides that where a conflict is found, any valid Federal law shall supersede the conflicting provisions of the Basic Agreement. In the Umpire's opinion, it is not necessary to take the matter to court, or to wait until the United States Supreme Court determines the issue in order to activate this provision. The Guideline in question is an interpretation of Title VII of the Civil Rights Act, and may properly be presumed to be valid until declared otherwise by the Federal Courts. A conflict with the provisions of the agreement might be found by the EEOC pursuant to a complaint filed with that Agency. It also might be found by an Umpire, if the circumstances were clear enough in a particular case before him."

Furthermore, the Arbitrator found:

> "The Guidelines have become part of the Code of Federal Regulations, and in the Umpire's judgment the provision in question (1604.10) constitutes a federal regulation within the meaning of the . . . agreement."

The Company instituted an action in the Court of Common Pleas of Auglaize County, seeking a judgment under Ohio Revised Code Sec. 2711.10 (D) vacating the arbitration award on the ground that the arbitrator exceeded his powers. Upon submission by both the Company and the Union of Motions for Summary Judgment, the Court of Common Pleas entered a judgment on December 11, 1973, denying the Company's Motion for Summary Judgment and granting the Union's Motion for Summary Judgment.

The Company appealed to the Court of Appeals of Ohio, Third Appellate District. On April 17, 1974 the Court of Appeals rendered its opinion which affirmed the decision of the Court of Common Pleas insofar as it refused to set aside the Arbitrator's award.

The Supreme Court of Ohio took jurisdiction of this matter upon the Company's appeal and, on June 25, 1975, affirmed the judgment of the Court of Appeals. The Ohio Court limited its decision to the specific issue before it. The Court reviewed the collective bargaining agreements between the Company and Union and found a specific provision granting authority to an arbitrator to modify the agreements:

> "In the instant case, the Pension Agreement does specifically provide for modification as necessitated by statute or regulation. No abuse of authority appears from the

arbitrator's decision that he could consider the modification clause to be subject to his jurisdiction and interpretation."

Since the collective bargaining agreements granted such specific authority to the arbitrator, the Court was not deciding a broad issue of law. The Court's reasoning reveals that it specifically rejected any theory that, absent the contractual grant of modification authority, an arbitrator could dispense his own interpretation of Title VII of the Civil Rights Act. However, because of the specific delegation in the instant case, the Court found that the grievance-arbitration process was a proper alternative forum to the statutory remedies provided in Title VII and that such a determination was mandated by this Court in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

REASONS FOR DENYING THE WRIT

I

The petition of the Company is an attempt to relitigate a principle established long ago by this Court in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960). Petitioner seeks to avoid the applicability of this case by claiming violations of its rights under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. These issues were not raised before the Supreme Court of Ohio and, therefore, are inappropriate for review by this Court.

Petitioner did argue before the Ohio Supreme Court that an arbitrator has no general authority to invoke statutory provisions as if such provisions were written into the agreements between the parties. Respondent did not, in the past, and does not now, contend that an arbitrator is imbued with any such general authority. However, such a broad question was not decided by the Ohio Supreme Court because the Court recognized that the parties' agreement contained a specific modification clause in Part V, Section C-8 of the Pension Insurance and Service Award Agreement. This clause provides: "The provisions of this section C may be appropriately modified where necessitated by federal or state statute or regulation." The Ohio Supreme Court viewed the arbitrator's authority as being drawn from this section. In fact, Petitioner never contended that the arbitrator lacked such authority. The Ohio Supreme Court recognized this failure and stated that: "No claim is raised that the arbitrator's determination that he had jurisdiction to alter the agreement as necessitated by statute or regulation exceeded his authority." 42 Ohio St. 2d 516, 519 (1975) Thus, it is clear that Ohio did not delegate any general authority to the arbitrator, it merely upheld an unchallenged provision of a contract.

Petitioner is, therefore, arguing that it was denied due process of law by a court decision upholding a provision of a valid contract into which it freely entered and failed to challenge in the lower courts. The illogic of this position is that Petitioner, unhappy with the result of an arbitration award, is now attempting to obtain a review of the merits of it. Respondent respectfully submits that such a position is contrary to the long standing rule established in *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

II

Petitioner also argues that this is a case of great public importance due to the possibility that upholding the decision of the Ohio Supreme Court could result in a "civil rights law of the shop." This approach ignores the narrow scope of the Court's decision. The Ohio Court upheld the arbitrator's decision because of the presence of a modification clause in the agreement. Should a civil rights law of the shop arise and prove undesirable, the parties need only remove the modification clause from the contract and insert in its place a provision expressly negating such authority.

In short, a civil rights law of the shop can, at present, arise only where the parties voluntarily grant the arbitrator power to modify the agreement. The policy question then is, "Does the Fourteenth Amendment preclude parties from providing a parallel remedy for discrimination where the parties have bargained for it and where the parallel remedy does not affect the aggrieved party's right to a trial de novo in federal court?" In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) this Court has already ruled upon this question. This Court described the propriety of alternative forums as follows:

> "(T)he arbitrator has authority to resolve only questions of contractual rights, and this authority remains regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by Title VII." *Supra*, at 53-54.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should not be granted.

Respectfully submitted,

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